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AFFINITY ENGINES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GOOGLE INC., a Delaware corporation, Plaintiff, v. AFFINITY ENGINES, INC., a Delaware corporation, Defendant.	Case No. C 05-0598 JW (HRL) **DECLARATION OF RORY G. BENS IN SUPPORT OF** **AFFINITY ENGINES, INC.'S MISCELLANEOUS ADMINISTRATIVE REQUEST TO FILE UNDER SEAL PURSUANT TO LOCAL RULES 7-11 AND 79-5:** **(1) UNREDACTED MOTION FOR FURTHER CASE MANAGEMENT CONFERENCE RE SCOPE OF BRIN AND PAGE DEPOSITIONS;** **(2) EXHIBITS 1 – 12 TO THE DECLARATION OF GABRIEL M. RAMSEY IN SUPPORT OF MOTION FOR FURTHER CASE MANAGEMENT CONFERENCE RE SCOPE OF BRIN AND PAGE DEPOSITIONS** Date: December 5, 2005 Time: 9:00 Judge: Hon. James Ware Location: Courtroom 8, 4th Floor

I, Rory G. Bens, declare as follows:

1. I am an associate with Orrick, Herrington & Sutcliffe LLP ("Orrick"), counsel for Defendant Affinity Engines, Inc. ("AEI") in the present action. I am over the age of eighteen and competent to make this declaration. I make each of the following statements based on my personal knowledge, and I could, if necessary, testify to the truth of each of them.

2. AEI's Motion for Further Case Management Conference Re Scope Of Brin And Page Depositions is being submitted for filing under seal because it quotes and references documents that both AEI and Google Inc. have designated "Highly Confidential – Attorneys' Eyes Only" under the terms of the protective order entered in the co-pending state court action. Specifically, the motion quotes and references documents, submitted as Exhibits 1 – 12 of the Ramsey Declaration, which contain sensitive, confidential business information. Both parties have designated these documents as "Highly Confidential – Attorneys' Eyes Only" under the terms of the state court Protective Order.

3. The parties have not yet submitted a Protective Order in the instant action, but have agreed that all materials produced in the related, co-pending California state court action will be considered produced in the instant action. Attached hereto as **Exhibit 1** is a true and correct copy of a prior CMC statement in the instant case, reflecting such agreement and reflecting agreement to submit a protective order in this case similar to that entered in the California State Court action. Counsel for AEI is submitting a draft protective order to Google and counsel for Orkut Buyukkokten, but has not been able to finalize and file that order before it was necessary to file the underlying Motion for Further Case Management Conference Re Scope Of Brin And Page Depositions. In the interim, a true and correct copy of the State Court Protective Order agreed to by the parties is submitted herewith as **Exhibit 2**. To the extent that the interests of independently represented Google employee Orkut Buyukkokten are implicated by these documents, AEI has communicated with Buyukkokten's counsel, who has agreed to AEI's use of these documents with respect to the underlying motion, provided that AEI files the documents under seal.

4. Because the Motion for Further Case Management Conference Re Scope Of Brin And Page Depositions contains confidential, sensitive business information, AEI has submitted the Motion in redacted and unredacted forms. In the redacted version, for public filing, confidential and sensitive information has been concealed. The unredacted version of the Motion is designated "Highly Confidential – Attorneys' Eyes Only" by AEI. AEI respectfully requests that the Court authorize the filing of the unredacted version of the Motion under seal pursuant to the terms of the state court Protective Order, to which the parties have agreed. AEI respectfully requests that only the redacted version of the Motion be filed publicly.

5. The Declaration of Gabriel M. Ramsey attaches as Exhibits 1 through 12, copies of private business correspondence internal to Google and Affinity Engines and portions of deposition testimony of Google and Affinity Engines witnesses describing sensitive, non-public business matters. In particular:

a. *Ramsey Decl. Exhibit 1*: contains deposition testimony regarding Google's private business activities, that Google has designated Confidential – Attorneys' Eyes Only.

b. *Ramsey Decl. Exhibit 2*: is confidential business correspondence produced in the case by Google and designated Confidential – Attorneys' Eyes Only.

c. *Ramsey Decl. Exhibit 3*: is confidential business correspondence produced in the case by Google and designated Confidential – Attorneys' Eyes Only.

d. *Ramsey Decl. Exhibit 4*: is confidential business correspondence produced in the case by Google and by Affinity Engines and designated by those parties as Confidential – Attorneys' Eyes Only.

e. *Ramsey Decl. Exhibit 5*: is confidential business correspondence produced in the case by Google and designated Confidential – Attorneys' Eyes Only.

f. *Ramsey Decl. Exhibit 6*: is confidential business correspondence produced in the case by Google and designated Confidential – Attorneys' Eyes Only.

g. *Ramsey Decl. Exhibit 7*: is confidential business correspondence produced in the case by Affinity Engines and designated as Confidential – Attorneys' Eyes Only.

h. *Ramsey Decl. Exhibit 8*: contains deposition testimony regarding Affinity Engines' private business activities, that Affinity Engines has designated Confidential – Attorneys' Eyes Only.

i. *Ramsey Decl. Exhibit 9*: contains deposition testimony regarding Affinity Engines' private business activities, that Affinity Engines has designated Confidential – Attorneys' Eyes Only.

j. *Ramsey Decl. Exhibit 10*: contains sensitive internal Google corporate documents and Google business correspondence, which Google has designated Confidential – Attorneys' Eyes Only.

k. *Ramsey Decl. Exhibit 11*: is confidential business correspondence produced in the case by Google and designated Confidential – Attorneys' Eyes Only.

l. *Ramsey Decl. Exhibit 12*: is a confidential internal Google document and associated correspondence and designated Confidential – Attorneys' Eyes Only.

6. All such correspondence and deposition testimony has been designated by either Google or Affinity Engines, "Highly Confidential – Attorneys' Eyes Only" under the terms of the state court Protective Order. AEI believes that all such information is, in fact, highly confidential business information for which good cause exists to file under seal.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 31st day of October, 2005 at Menlo Park, California.

Rory G. Bens

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